IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

MONDAY, THE 25TH JUNE 2007 / 4TH ASHADHA 1929

WP(C).No. 16048 of 2007(I)

PETITIONER:

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1. RUBY SUNNY, WIFE OF A.J.SUNNY,
ATHANICKAL HOUSE, FLAT NO.502,MUNDAKKAL APARTMENTS
STATUE JUNCTION, TRIPUNITHURA.

2. A.J. SUNNY, SON OF JOHN,
ATHANICKAL HOUSE, FLAT NO.502,MUNDAKKAL APARTMENTS
STATUE JUNCTION, TRIPUNITHURA.

BY ADV. SRI.BOBY MATHEW
SRI.E.T.MATHEW

RESPONDENTS:

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1. STATE OF KERALA,
REPRESENTED BY CHIEF SECRETARY, SECRETARIAT,
THIRUVANANTHAPURAM.

2. THE DISTRICT COLLECTOR,
COLLECTORATE, ERNAKULAM.

3. THE EXECUTIVE ENGINEER,
PUBLIC WORKS DEPARTMENT, ERNAKULAM.

4. THE ASSITANT ENGINEER,
PUBLIC WORKS DEPARTMENT, TRIPUNITHURA.

5. THE TAHSILDAR,
KANAYANNUR TALUK OFFICE, ERNAKULAM.

6. THE VILLAGE OFFICER,
NADAMA VILLAGE OFFICE, TRIPUNITHURA.

7. TRIPUNITHURA MUNICIPALITY,
REPRESENTED BY ITS SECRETARY, TRIPUNITHURA.

*ADDL.8 ASST. EXECUTIVE ENGINEER, PWD ROADS SUB DIVISION,
ERNAKULAM (IMPLEADED AS PER ORDER DATED 31.5.07 IN I.A.6801/07

BY SRI. V.M. KURIAN -SC.
GOVERNMENT PLEADER SRI. I.V. PRAMOD

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 25/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

S. SIRI JAGAN, J.

W.P.(C)NO.16048 OF 2007

DATED THIS THE 25th DAY OF JUNE, 2007

JUDGMENT

The petitioners are challenging eviction from the properties occupied by them. Ext.P5 notice issued to the 2nd petitioner directs them to vacate the premises within three days. The 2nd petitioner has already filed Ext.P6 objections. The petitioners challenges Ext.P5 eviction notice on the ground that they have not been afforded an opportunity of being heard before eviction was ordered.

2. I have heard the learned Government pleader also. The learned Government pleader could not satisfy me that Ext.P5 order was preceded by any earlier notice and hearing, which is the procedure prescribed under the Kerala Land Conservancy Act and Rules for evicting unauhtorised occupation of land. Even where the emergency provisions under the Act are invoked, the relevant provisions require that reasons for invoking the emergency clause should be mentioned in the order passed. Ext.P5 does not contain any such reasons also. That being so, I am satisfied that the eviction proceedings have been initiated without complying with the principles of natural justice as also the provisions of the Kerala Land Conservancy Act and Rules.

However, I do not think that it is necessary to set aside Ext.P5 itself, since the same can be treated as a show cause notice as contemplated under law. In the above circumstances, I direct the additional 8th respondent to forward Exts.P5 and P6 to the 5th respondent, who shall take appropriate proceedings treating Ext.P5 as a show cause notice and considering Ext.P6 objections, after affording an opportunity of being heard to the petitioner which shall include an opportunity to adduce evidence also. Thereafter the 5th respondent shall pass a speaking order considering all the contentions of the petitioners against the proposed eviction. Needless to say, till final orders are passed no further proceedings shall be taken for eviction of the petitioners from the land in question.

The writ petition is disposed of as above.

S. SIRI JAGAN, JUDGE

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